

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:18-cv-03788-JMS-MPB
	)	
\$50,000.00 UNITED STATES CURRENCY	)	
(Asset Identification No.: 17-CBP-000241),	)	
\$50,000.00 UNITED STATES CURRENCY	)	
(Asset Identification No.: 17-CBP-000301),	)	
	)	
Defendants.	)	

**ORDER**

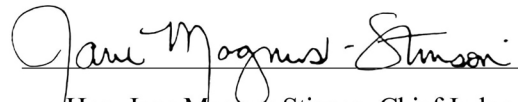
Presently pending before the Court is the Government's Motion for Clerk's Entry of Default in this civil asset forfeiture matter. [[Filing No. 7.](#)] The Government has established that potential claimants Amber McDonald, North Coast Steel, and Jenny Ringrose were served by U.S. Mail. [[Filing No. 7-1 at 1-2.](#)] However, the Government failed to include the affidavit required by § 201 of the Servicemembers Civil Relief Act of 2003, [50 U.S.C. § 3931](#). Instead, the Government's declaration states that the declarant has no reason to believe that Ms. McDonald or Ms. Ringrose are in the military "on information and belief." [[Filing No. 7-1 at 3.](#)]

However, an affidavit based upon information and belief is insufficient under the Act because it fails to supply the necessary facts to support the affidavit as required by [50 U.S.C. § 3931\(b\)\(1\)\(A\)](#). In *Gustavia Home, LLC v. Derby*, for example, the United States District Court for the Eastern District of New York held that an affidavit stating that "upon information and belief no defendant in default is in the military service as defined by law" was insufficient support for a Motion for Default Judgment because the plaintiff had "not provided any documentation to support its claim that defendant . . . is not in the military, nor do its motion papers offer any hint that it

undertook an investigation into [defendant's] military status.” [2017 WL 9989600, at \\*1 \(E.D.N.Y. May 16, 2017\)](#)). Although *Gustavia* dealt with a Motion for Default Judgment, the Court concludes that its logic extends to the pending Motion for Clerk’s Entry of Default. If the Government does not know the potential claimants’ military status, it should consult the website that the Department of Defense maintains to enable the public to comply with the Act.

Because the Government has failed to comply with the requirements of the Civil Servicemembers Relief Act, its request for clerk’s entry of default [7] is **DENIED without prejudice**.

Date: 5/2/2019

  
Hon. Jane Magnus-Stinson, Chief Judge  
United States District Court  
Southern District of Indiana

**Distribution via EFC only to all counsel of record.**

Distribution via U.S. Mail:

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